

App. No. 10/777,667  
Amdt. Dated September 6, 2005  
Reply to Office Action of June 3, 2005  
Atty. Dkt. No. 8590-101

## REMARKS / ARGUMENTS

This reply is responsive to the Office Action mailed June 3, 2005.

Reconsideration and allowance of the application and presently pending claims 1-19 and 25-29 are respectfully requested.

### Present Status of the Patent Application

Claims 1-19 and 25-29 remain pending in the application. Claims 1-19 and 25-27 have been rejected. Claims 4, 16 and 19 have been cancelled without prejudice. Claims 28 and 29 have been added.

### Response to Claim Rejections Under 35 U.S.C. §103

Claims 1-7 and 25-27 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Cordes (U.S. Patent No. 3,636,999) in view of Losito (U.S. Patent No. 3,734,004) and <http://www.cfic.ca>. Applicant respectfully traverses this rejection.

The Cordes patent discloses an apparatus for pulling both the tops and root tendrils from garlic bulbs. The tendrils are removed from the garlic bulb root plate.

The Losito patent discloses an apparatus for cutting the tops and root tendrils from mushrooms. The <http://www.cfic.ca> reference discloses the packaging of vegetables.

### *Independent Claims 1 and 27*

Independent claims 1 and 27, as amended, are allowable for at least the reason that Cordes, Losito, and <http://www.cfic.ca> do not disclose, teach, or suggest "securing a top portion of each of the vegetables" and "driving the rotating members sufficiently to apply an abrupt jarring force to a bottom portion of each of the vegetables acting substantially in a direction opposite the top portion . . . to rip apart a root crown to

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separate a bottom portion only of the root crown from the remaining portion of each vegetable upon engaging the rotating members."

In this regard, and with reference to the teaching of the Cordes patent, the Office Action cites col. 1, lines 64-67:

... With rotation, the pulling pressure increases without cutting action until the top and the outer skin adjacent to the top is pulled loose from the bulb, or the root tendrils are pulled from the root plate...

Cordes discloses pulling **both** the top and the root tendrils from the garlic bulb. There is no suggestion, nor teaching, of separating "a bottom portion only."

In addition, Cordes specifically states (col. 1, lines 61-64) that "[t]he roll contours and roll position are designed to exert a **gentle** and positive pulling action on the tops and root tendrils of the garlic bulbs when they are caught between the contact points of the **slowly** rotating rolls." Slow gentle pulling is the antithesis of "abrupt jarring." Therefore, Cordes does not disclose "securing a top portion of each of the vegetables" and "driving the rotating members sufficiently to apply an abrupt jarring force to a bottom portion of each of the vegetables acting substantially in a direction opposite the top portion."

As specified in the claims, Applicants' method includes "moving the secured vegetables . . . into engagement with a pair of like sized reversely rotating members," and "driving the rotating members sufficiently to apply an abrupt jarring force." Cordes, on the other hand, discloses driving a pair of different sized rubber rollers in a gentle manner to avoid bruising or breaking apart the garlic bulbs. For example, reference may be made to col. 1, lines 23-25, where it is stated concerning the prior art, as follows:

This costly procedure has been tolerated because conventional vegetable toppers bruise garlic bulbs severely and often break them apart, decreasing their usefulness.

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On the other hand, Applicants' claim a method which drives "the rotating members sufficiently to apply an abrupt jarring force . . . to rip apart a root crown to separate a bottom portion only of the root crown from the remaining portion of each vegetable upon engaging the rotating members." Thus, Applicants cause the abrupt jarring force by "driving the rotating members sufficiently . . . to rip apart a root crown," Cordes teaches away from ripping away a root crown, by expressly stating that the prior art would "bruise garlic bulbs severely and often break them apart, decreasing their usefulness."

On the other hand, Cordes exerts "a gentle and positive pulling action on the tops and root tendrils of the garlic bulbs when they are caught between the contact points of the slowly rotating rolls." Thus, the Cordes rubber rolls are rotated in a sufficiently slow manner so that "the root tendrils are pulled from the root plate." The gentle pulling action as taught by Cordes is designed not to bruise or break apart a garlic bulb, and merely remove the tendrils from the root plate without breaking it apart. Thus, the Cordes method is designed not to, and thus is incapable of ripping apart an onion root crown.

It is also noted that Applicants claim that their method applies a sufficient force to "rip apart a root crown to separate a bottom portion only." Unlike the Cordes reference, the root crown portion only is removed, and not the tops of the vegetables as taught by Cordes.

Additionally, Applicants claim that their inventive method applies "an abrupt jarring force to a bottom portion of each of the vegetables . . . upon engaging the rotating members." Contrariwise, Cordes teaches the use of elongated rubber rollers and a rubber friction mat 34 to gently orient and move the garlic bulb until its tendrils become captured between the slowly rotating rollers. This action occurs gradually and not "upon engaging the rotating members." Only after engaging the rollers do they tumble along the rollers until the tendrils are captured.

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The Losito patent teaches the securing of the top portion of a vegetable, and is combined with the teachings in the Cordes patent. In discussing the combination as stated in the Office Action, "the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." Also as stated in the Office Action, "it would have been obvious to use the invention of Cordes in the derooting of any vegetable, it also would have been obvious to support the vegetable, as taught by Losito, in a manner appropriate to the vegetable's specific shape and size, to prevent damage during derooting." However, there is no statement in the Office Action as to any motivation to combine the Cordes and Losito references.

In order to show a motivation to combine, the Office Action must show a teaching, a suggestion or an incentive to combine. See *Ex parte Metcalf*, Bd Pat App & Int, 5/2/2003 (67 USPQ 1633). There is no motivation to combine the teachings of these two references, since Cordes clearly teaches away from providing any increase of forces being applied on the vegetable. Cordes is concerned about avoiding the bruising or breaking apart of the garlic bulbs. As mentioned previously, reference may be made to col. 1, lines 23-25, as follows:

This costly procedure has been tolerated because conventional vegetable toppers bruise garlic bulbs severely and often break them apart decreasing their usefulness.

Instead, Cordes is concerned with providing "gentle pulling action will separate the fragile ends without damage to the bulbs." This teaches away from providing additional forces acting on the bulb as suggested by Losito. Therefore, it is clearly improper to combine the teachings of Cordes and Losito.

Furthermore in this regard, the Office Action acknowledges that "Cordes does not disclose a step of securing a top portion of each of the vegetables," but with reference to the teachings of the Losito patent the Office Action cites Figs. 1, 2, and 7. As can be seen by a review of these figures, the mushroom is suspended by its cap by support members 43, 43' and foam material 44 on push belt 41. From this position the

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mushroom is delivered to the stem holding means 60 and appropriately positioned by the root positioning means 50. The stem holding means 60, as the name implies, holds the mushroom by its stem or middle portion. The root positioning means 50 pushes up the mushroom so that approximately a midpoint of the stem of the mushroom is held between belts 61, 61'. (See Fig. 4) While held in generally this position, the roots and the cap are cut from the stem of the mushroom using rotating knives 71 and 111, respectively. (See Figs. 4 and 5) At no time while the mushroom is suspended by its cap is any force applied to the mushroom to remove its roots. Therefore, Losito does not disclose "securing a top portion of each of the vegetables" and "applying an abrupt jarring force to a bottom portion of each of the vegetables acting substantially in a direction opposite the top portion."

In addition, it would not have been obvious to combine Cordes and Losito for at least the following additional reasons: 1) the types of vegetables processed by these devices are significantly different, the garlic and onion bulbs of Cordes are hard vegetables with dry mature tops, while the mushrooms of Losito are soft, fleshy vegetables; 2) the fluted and spiral rolls of Cordes are spaced to define a bulb supporting pocket and using Losito to suspend the vegetable above and out of this pocket would not allow the rolls to remove the roots of the vegetable; and 3) the shapes of the vegetables processed by these devices are significantly different, the garlic and onion bulbs of Cordes could not be physically held like the t-shaped mushrooms of Losito. Therefore, Losito neither teaches the invention as defined by claims 1 and 27, nor would be obviously combined with Cordes.

The <http://www.cfic.ca> reference deals only with the packaging of vegetables and does not add anything to the Cordes patent in the above mentioned area.

Accordingly, the rejections are deficient in this area. Notwithstanding, the undersigned has reviewed the entirety of these references and has failed to identify any such teaching anywhere within these references. Accordingly, the Cordes patent, the

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Losito patent, and <http://www.cfic.ca> fail to teach or disclose the invention as defined by claims 1 and 27, and the rejections of claims 1 and 27 should be withdrawn.

#### *Dependent Claims*

Dependent claims 2-19, 25, and 26 are allowable for at least the reason that these claims depend from allowable independent claim 1. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

#### *Added Claims*

Claims 28 and 29 are allowable since they contain all of the limitations of claims 1 and 27, respectively. Claim 28 specifies a "clamp" in place of the "rotating members," Claim 29 specifies the direction of travel of the vegetables.

Claims 11-19 have been rejected under 35 USC 103(a) as being unpatentable over Cordes, Losito, <http://www.cfic.ca>, and Kruithoff. Claims 16 and 19 have been cancelled without prejudice. The remaining dependent claims 11-15, 17 and 18 are patentable along with their parent claim 1. Also, in connection with claim 13, it is stated in the Office Action that the holding of the upper portion of the vegetables . . . in order to provide support for the vegetable and increase the opposing force for more efficient pulling of the roots." Emphasis added. As mentioned previously, an increase in the force on the garlic bulb would tend to be less gentle on the bulb, and thus more likely to bruise or break apart the bulb. Cordes teaches away from increased forces. Cordes clearly teaches gentle forces as applied by his slowly moving rubber rollers of equal size. Thus, claims 11-15, 17 and 18 patentably distinguish the cited references, either taken alone or in combination

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### CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and rejections have been traversed, rendered moot, and/or accommodated, and that now pending claims 1-19 and 25-29 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned at 619-231-3666.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

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